SINGLE BENCH 3

(1)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR: C.G.
WRIT PETITION NO. OF 2005
W.P. 1338/05

WRIT PETITION UNDER ARTICLE 227, CONSTITUTION OF INDIA

Petitioners: 1) Gram Panchayat, Jhalmala,
Through : Secretary, Gram Panchayat, Jhalmala,
Thana Sipat, District Bilaspur (C.G.)

2) Deepak Sahu S/o Bhalau Sahu,
Sarpanch, Village Panchayat Jhalmala,
Thana Sipat, District Bilaspur (C.G.)

P.R. No. WP 20/05
Presented by Shri Sanjay Jain Adv.
dated 04-01-05

Defendants 1 & 2

Versus

Respondents: 1) Sahmat Khan S/o Ismaiel Khan, aged 32 years,
Thana Sipat, Tahsil Masturi,
District Bilaspur (C.G.).

Plaintiff

2) Gendram Gandharv,
R/o Village Jhalmala, Thana Sipat,
Tahsil Masturi, District Bilaspur (C.G.)

Defendant no.3

A.F.R. 89

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1338 of 2005

Gram Panchayat, Jhalmala & another

- Versus -

Sahmat Khan & another

POST FOR ORDER ON 30-6-2005

Sd/-
L.C. Bhadoo
Judge

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1338 of 2005

Gram Panchayat, Jhalmala & another

- Versus -

Sahmat Khan & another

Present: -

Mr. Sanjay S. Agarwal, Advocate: For the petitioners

Before Hon'ble Mr. L.C. Bhadoo, J.

O R D E R

(Passed on 30th June, 2005)

1. The petitioners who are defendants No.1 & 2 in the suit pending in the court of the 3rd Additional Civil Judge Class-II, Bilaspur have preferred this writ petition questioning the legality of order dated 28.3.2005 passed by learned Additional District Judge, Bilaspur in Miscellaneous Civil Appeal No.11/05 whereby learned Additional District Judge allowed the miscellaneous civil appeal filed by respondent No.1 herein and set aside the order dated 9.3.2005 passed by learned 3rd Additional Civil Judge whereby the application filed by respondent No.1 herein under Order 39 Rules 1 & 2 of the CPC was rejected. The appellate Court directed the petitioners herein not to stop respondent No.1 from collecting the tax from the weekly cattle fair of Gram Panchayat Jhalmala.

2. Brief facts, as set out in the writ petition, are that respondent No.1 herein filed a civil suit in the court of learned 3rd Additional Civil Judge, Class-II, Bilaspur for issuance of permanent injunction restraining the petitioners herein from creating any obstruction in collecting the tax in the weekly cattle fair of Village Panchayat Jhalmala and not to prevent the plaintiff from collecting the tax from the said fair on the ground that in the month of August, 2004 Gram Panchayat Jhalmala gave right of collecting tax from the weekly cattle fair on contract basis for a period of one year, in that process auction was conducted and the plaintiff being the highest bidder of Rs.1,03,000/- the auction was accepted in his favour. The

plaintiff deposited the entire auction amount in three installments i.e. Rs.25,750/- on 23.8.2004; Rs.30,000/- on 1.10.2004 & Rs.47,250/- on 11.10.2004. The Sarpanch after receiving the said amount issued receipts in favour of the plaintiff. Thereafter, the plaintiff was allowed to collect the tax from the said weekly cattle fair market and since the Gram Panchayat Jhalmala gave the contract to the plaintiff, it is binding on the defendants also, as the plaintiff has already deposited the entire auction amount. However, on 12.2.2005 defendant No.2 served a notice on the plaintiff asking him not to collect tax from the weekly cattle fair market, respondent No.1/plaintiff submitted reply of same, however, on 2.3.2005 when the plaintiff and his persons were collecting the tax in the weekly cattle fair market defendant No.2 came in the market, started creating obstructions and asked the plaintiff not to collect the tax and said that he has no right to collect the tax. Respondent No.1 herein filed suit along with an application under Order 39 Rules 1 & 2 of the CPC for grant of temporary injunction supported by an affidavit. The petitioners herein filed reply of the said application and stated that it is incorrect to say that the contract was given to the plaintiff for collection of tax from the weekly cattle fair market and it is also incorrect to say that auction amount Rs.1,03,000/- has been deposited in the account of Gram Panchayat Jhalmala by the plaintiff or by the then Sarpanch namely Gendram Gandharv (defendant No.3.). The plaintiff produced a receipt of Rs.10,000/- regarding the deposits made at the time of auction, but the same amount has also not been deposited in the account of Gram Panchayat. It was further mentioned in the reply that the plaintiff in collusion with the former Sarpanch has entered into illegal activities, as there is no privity of contract between the plaintiff and defendant-Gram Panchayat. Thereafter, when defendant Nos. 1 & 2 came to know about the said illegal activities they asked the plaintiff to produce the documents regarding his right of collection of tax, but in response to the said notice when plaintiff failed to appear, then on 28.2.2005 the Gram Panchayat took a decision to cancel the contract of the plaintiff under Section 85 of the Gram Panchayat Adhiniyam, 1993, same was approved by the Prescribed Officer, Janpad Panchayat

Masturi. In compliance of the resolution the Panchayat has been given right to collect the tax from the weekly cattle fair market to w.e.f. 1.3.2005. They have started collecting tax w.e.f. 2.3.2005. It was further mentioned in the said reply that since no contract agreement has been executed between the Gram Panchayat & Plaintiff therefore, no prima-facie case is made out in favour of the plaintiff nor the balance of convenience is in favour of the plaintiff and if the injunction is not granted in his favour he is not going to suffer any loss.

3. Learned 3rd Additional Civil Judge Class-II after hearing the parties rejected the application of plaintiff/respondent No.1 on the ground that the plaintiff has failed to prove his case that he has deposited auction amount in the account of Gram Panchayat Jhalmala. There is no entry regarding deposit of auction amount in the register of Gram Panchayat and defendant No.3 has not made any entry regarding the deposit of amount. Against the said order respondent No.1 filed a miscellaneous civil appeal. The appellate Court after hearing the parties reached to the conclusion that resolution passed by the Gram Panchayat can be cancelled under Section 85 of the Adhiniyam by the Government or the Prescribed Authority i.e. Sub Divisional Officer, therefore, the Panchayat was not entitled to cancel the auction dated 21.8.2004. Even the Chief Executive Officer was not entitled to pass any order that Gram Panchayat is entitled to collect the tax from the weekly cattle fair market. The auction was accepted in favour of the plaintiff on 23.8.2004 being the highest bidder, therefore, there is prima-facie case in favour of the plaintiff and balance of convenience lies in favour of the appellant/respondent No.1 herein, if the plaintiff is not allowed to collect the tax then irreparable loss will be caused to him.

4. I have heard learned counsel for the petitioners. None present on behalf of the respondents.

5. Learned counsel for the petitioners argued that the learned appellate Court granted the relief which amounts to allowing the main relief prayed in the suit, by way of temporary injunction a relief cannot be granted as of main relief and for this argument he

placed reliance on the decision of the Hon'ble Apex Court in the matter of **Union of India & others Vs Modiluft Ltd.** reported in **(2003) 6 Supreme Court Cases 65** and also on the decision of Madhya Pradesh High Court in the matter of **Ramesh Chandra Shivhare V. State of M.P. and others** reported in **1996(2) Vidhi Bhasvar 177**. He also argued that the contention of respondent No.1 that the auction amount of Rs.1,03,000/- was deposited is without any basis, as no such amount was found to be deposited in the ledger or account of Gram Panchayat. He further submitted that in view of Section 4 of the M.P. Panchayat (Modes of Executing Contract) Rules, 1995 no contract agreement was executed between the Gram Panchayat and respondent No.1, therefore, no legal enforceable contract was existing between the two.

6. Having heard learned counsel for the petitioner, I have perused the record as well as the orders passed by learned 3rd Additional Civil Judge and also learned Additional District Judge. It is settled law that the discretionary powers exercised by the trial court in the matter of temporary injunction cannot be lightly interfered by the appellate Court unless the order passed by the trial court is perverse and contrary to the settle principles of law and documents & records of the case. For this purpose, we have to look into the facts of the case whether respondent No.1 herein was able to prove his prima-facie case, balance of convenience and irreparable loss in his favour.

7. Perusal of proceedings (Annexure P-2), which has been filed by the defendants/petitioners along with this writ petition shows that on 21.8.2004 the meeting of Panchayat was convened, in that meeting the Panchayat decided to auction the right to collect the tax from the weekly cattle fair market for the year 2004-05, on that day itself the said resolution was made known to the villagers through the Village Kotwar. In pursuance thereof on 23.8.2004 auction was held in which three persons namely Ramji Yadav, Sageer Ahmed and respondent No.1 herein participated, each of them deposited Rs.10,000/- and bid of respondent No.1 herein i.e. Rs.1,03,000/- being the highest bid was accepted and right to collect tax from the weekly cattle fair market w.e.f. 23.8.2004 to 22.8.2005 was given to

respondent No.1. This proceeding bears the signatures of the Sarpanch, Panchas and other persons. Thereafter, respondent No.1 herein deposited the auction amount in three installments with the then Sarpanch on different dates i.e. Rs. 25,750/- on 23.8.2004; Rs.30,000/- on 1.10.2004 & Rs.47,250/- on 11.10.2004 and the then Sarpanch/ respondent No.2 herein issued the said receipts under his signature and seal of that very Gram Panchayat. Respondent No.2 herein, who was legally elected Sarpanch at that time, has not denied this fact. Respondent No.1 started collecting tax and he continued to collect tax till February, 2005. Things started taking turn only after the elections for constitution of new Panchayat were held in the month of February, 2005 and petitioner No.2 herein was elected as Sarpanch of Gram Panchayat Jhalmala. It may be true that the said auction amount of Rs.1,03,000/- deposited by respondent No.1 herein may have not been entered in the Panchayat register or ledger by the then Sarpanch-defendant No.3/respondent No.2 herein, who collected the said amount from respondent No.1 herein, but because of this reason it cannot be said that respondent No.1 had not deposited the amount. The Gram Panchayat accepted the bid of respondent No.1 and in pursuance thereof he deposited the bid amount in three installments with the then Sarpanch, who issued the valid receipts in token of the deposit of that money. However, if respondent No.2 had embezzled that amount and not deposited the same in the account of Gram Panchayat then the authority concerned can take action against him but they are not entitled to interfere with the right of respondent No.1 regarding collection of tax from the cattle market, as the same was legally handed over to him after acceptance of his bid. It has not been denied by the petitioners herein that respondent No.2 did not collect the said amount and not issued the receipt, which was filed by respondent No.1. Therefore, respondent No.1 was able to make out a strong prima-facie case in his favour.

8. As far as non-execution of the contract agreement is concerned, merely on this ground that the petitioners are not entitled to interfere with the right of respondent No.1 because the bid of

respondent No.1 was accepted, bid amount was deposited by him and therefore, it was the duty of Gram Panchayat to execute the contract agreement in view of Rules 3 & 4 of the Rules, 1995. As the former Sarpanch had already collected the entire auction amount from respondent No.1 and issued receipt in token thereof, now the existing Panchayat cannot take defence that since agreement has not been executed between the parties, respondent No.1 is not entitled to collect the tax from the weekly cattle fair market. Moreover, as per provisions of Section 85 of the Adhiniyam, 1993 only the State Government or Prescribed Authority is entitled to suspend the execution of any resolution passed by the Gram Panchayat. After elapse of about six months of the resolution the Gram Panchayat was not entitled to review resolution dated 21.8.2004 that too without any valid reasons. Therefore, respondent No.1 has been able to make out a strong prima-facie case in his favour and even the balance of convenience also lies in his favour, as he had deposited the entire auction amount, therefore, he has right to collect the tax from weekly cattle fair market and if any interference is caused in his right to collect the tax that will amounts to interference with the legal rights of respondent No.1, which was granted to him in an auction held by the Panchayat. Therefore, if he is prevented from collecting the tax then that will cause irreparable loss to him.

9. Now coming to the question raised by learned counsel for the petitioners herein that by way of temporary injunction a relief cannot be granted which amounts to main relief. It is true that it is settled principle of law, but it is also settled law that where on the basis of facts and circumstances of the case, strong prima facie case is made out in favour of the plaintiff, which warrants issuance of ad-interim mandatory injunction then that can also be issued and also in case if temporary injunction is not granted in favour of the plaintiff and by the time the suit will be decided the relief sought for by the plaintiff will be rendered infructuous, also in cases where the injury complained of is immediate and pressing and would cause extreme hardship to the plaintiff on account of delay in decision of the suit, in that situation, the Court

considering the exceptional case can issue ad-interim mandatory injunction. In this connection, I am fortified in my view by the decision of the Apex Court in the matter of **Deoraj v. State of Maharashtra and others** reported in **(2004) 4 SCC 697**, stating:

> "Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong *prima facie* case – of a standard much higher than just *prima facie* case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent."

10. On the basis of above principle, if we look into the facts of present case, as has been discussed in the earlier part of this order, Gram Panchayat: Jhalmala auctioned right to collect tax from the weekly cattle fair market on 23rd August, 2004. The petitioner's bid being highest was accepted and he deposited the entire auction amount with the then Sarpanch of Gram Panchayat: Jhalmala, thereafter, he was allowed to collect the tax w.e.f. 23rd August, 2004, and he was continuously collecting the tax till February, 2005 as per his right. However, the respondents all of a sudden without any valid basis stopped the petitioners from collecting tax and started causing interference. In view of the above facts, I am of the considered opinion that the appellate Court has rightly allowed the

appeal and prohibited the petitioners herein from interfering with the right to collect the tax from the weekly cattle fair market.

11. In the result, there is no merit in the petition, same is liable to be dismissed and it is accordingly, dismissed at the admission stage itself.

Sd/-
L.C. Bhadoo
Judge

Roshan/-